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OGC 64-1784

10 June
24 JUL 1964

OGC Has Reviewed

MEMORANDUM FOR: Deputy Director of Central Intelligence

SUBJECT: Agency Procedures in Connection with
Prosecution in Criminal Cases Where
Operational Security is Involved

28 USCA 535

1. This memorandum contains a recommendation in paragraph 4 for approval by the Deputy Director of Central Intelligence.

2. The Inspector General recently proposed that Agency procedures for decisions concerning prosecution in criminal cases which have operational security implications be formalized in writing. He suggested also the desirability of not reducing the procedures to a matter of regulation. We agree with these suggestions. The procedures suggested herein, however, are concerned only with Agency decisions with respect to prosecution (and other disciplinary actions). The Executive Director-Comptroller and the DDCI need to be informed promptly on any occasion when there is indication that a crime may have been committed by an Agency employee or agent. The responsibility of Deputy Directors to so inform the Executive Director-Comptroller and the DDCI continues.

3. The following procedures are proposed:

a. When any component has information indicating that an Agency employee or agent may have committed a crime which involves Government money or property or may involve operational security, the Deputy Director of the component will report promptly to the Inspector General and the General Counsel.

b. The Inspector General will then conduct an investigation.

c. The Inspector General will report the results of his investigation to the Deputy Director of Central Intelligence, the General Counsel, and the Deputy Director of the

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component having command responsibility for the employee or agent.

d. The General Counsel will determine whether there is reasonable basis to believe that a crime has been committed.

e. If the General Counsel determines there is no reasonable basis to believe that crime has been committed, he will so advise the Deputy Director of Central Intelligence, the Inspector General, and the appropriate Deputy Director. Insofar as criminal prosecution is concerned, the case will then be considered closed.

f. If the General Counsel determines there is basis to believe that crime has been committed, he will discuss the operational security aspects with the appropriate Deputy Director and the Inspector General. If there is agreement that the operational security aspects preclude prosecution, the appropriate Deputy Director will so inform the Deputy Director of Central Intelligence with a recommendation that the case not be referred to the Department of Justice for prosecution.

g. If the three officials fail to agree or if they agree that possible prosecution should be further explored, the General Counsel will discuss the case in general terms with the Department of Justice in order to determine whether Justice is prepared to prosecute and, in the event the Justice attitude is in the affirmative, the nature and extent of the evidence which will be required for prosecution. The discussion will not reveal the identity of the individual nor the location of the incident.

h. If the Department of Justice believes there is no basis for prosecution, the General Counsel will so advise the Deputy Director of Central Intelligence, the Inspector General and the appropriate Deputy Director. Insofar as criminal prosecution is concerned, the case will then be considered closed.

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i. If the Justice attitude is in the affirmative, the General Counsel will advise the appropriate Deputy Director of the nature and extent of the evidence required. The appropriate Deputy Director will initiate a memorandum to the Deputy Director of Central Intelligence in which he will recommend in favor of or against referring the case to the Department of Justice for prosecution. In those instances in which he recommends against referral, he will state the reasons for his recommendation in sufficient detail to permit review and decision by the Deputy Director of Central Intelligence. Such memorandum shall be forwarded to the Deputy Director of Central Intelligence through the General Counsel and the Inspector General for their concurrence or non-concurrence.

j. When the incident involves, either directly or indirectly, a component other than the component of the individual, the memorandum required in subparagraph i. above shall be forwarded through the other interested component for concurrence or nonconcurrence as well as through the General Counsel and the Inspector General.

k. The decision to refer or not to refer the case to the Department of Justice for prosecution will be made by the Deputy Director of Central Intelligence.

l. In any case which is not referred for prosecution, other administrative or disciplinary actions may be recommended to the Deputy Director of Central Intelligence.

m. In cases arising within the Office of the Director of Central Intelligence, the responsibilities of the Deputy Directors specified above will be discharged by the Executive Director-Comptroller.

4. Your approval of the foregoing procedures is recommended.

s/ Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel

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Concurrence Sheet for General Counsel Memorandum to the Deputy
Director of Central Intelligence, Subject: Agency Procedures in
Connection with Prosecution in Criminal Cases Where Operational
Security is Involved, dated 10 JUN 1964

CONCURRENCES:

S/
Inspector General

6/26/64
Date

S/
Deputy Director for Plans

7/1/64
Date

for S/
Deputy Director for Intelligence

7/6/64
Date

S/
Deputy Director for Support

7/2/64
Date

for S/
Deputy Director for Science & Technology

7/8/64
Date

The Recommendation Contained in
Paragraph 4 is Approved.

S/
Deputy Director of Central Intelligence

7/24/64
Date

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